

LAFAYETTE ROAD

11.21" GRANITE BOUND FOUND
0.20 A.G. W/IRON ROD
3/21/2019 (HELD)

BENCHMARK:
MAGNETIC NAIL SET IN
UTILITY POLE N/NEAR
4/23/19
EL.=42.12

MAP 175 LOT 3

N/F
KENNEBUNK SAVINGS BANK
P.O. BOX 28
KENNEBUNK, ME 04043
RCRD BK.#5333 PG.#42

IRON ROD FOUND
FLUSH W/CAP
"JONES & BEACH"
3/21/2019 (HELD)

RAIL ROAD SPIKE FOUND
W/PUNCH MARK FLUSH
3/21/2019

SEWER
STUB

10' FRONT YARD SETBACK

7' SIDE YARD SETBACK

TIE
9.90'

N 84°34'26" W

3-D ENTRY

12'x12' OFFICE

EQUIPMENT AREA

DISCONNECTED METER

BUILDING HEIGHT=19.2

OVERHANG (TYPICAL)

FF=43.9

#349 EXISTING BUILDING

PASS THRU ENTRY

SERVICE BAYS

TAX MAP 175 LOT 5
12,800 S.F.
(0.2939 ACRES)

40' X 50' FOOTPRINT

~GRAVEL~

7' SIDE YARD SETBACK

50°34'45"E 135.51'

MAP 175 LOT 6

N/F
KENNEBUNK SAVINGS BANK
P.O. BOX 28
KENNEBUNK, ME 04043
RCRD BK.#5333 PG.#45

BENCHMARK:
MAGNETIC NAIL SET
ROOT OF 15" MAPLE
EL.=45.22



15" MAPLE

L=88.08'

R=61.80'

Δ=81°39'51"

CHB=N43°48'50"W

CHL=80.82'

IRON ROD FOUND
3/25/2019

ABANDONED SIGN

INGRESS, EGRESS &
REGRESS
EASEMENT
(SEE RCRD BK.#5985
PG.#2763)

IRON ROD FOUND
3/21/2019

N45°53'15"E

26.00'

20.00'

20.00'

28.01'

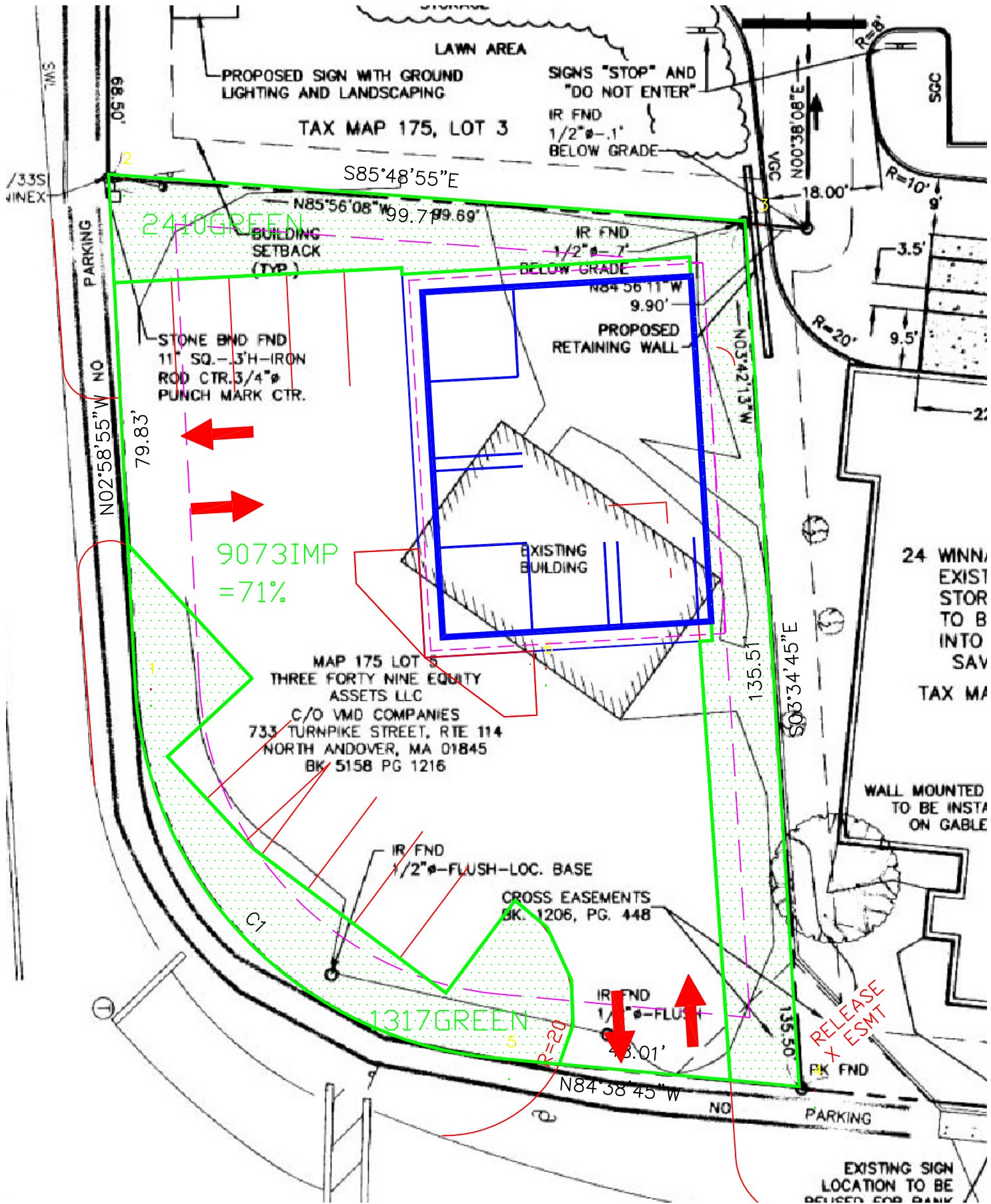
N84°38'45"W

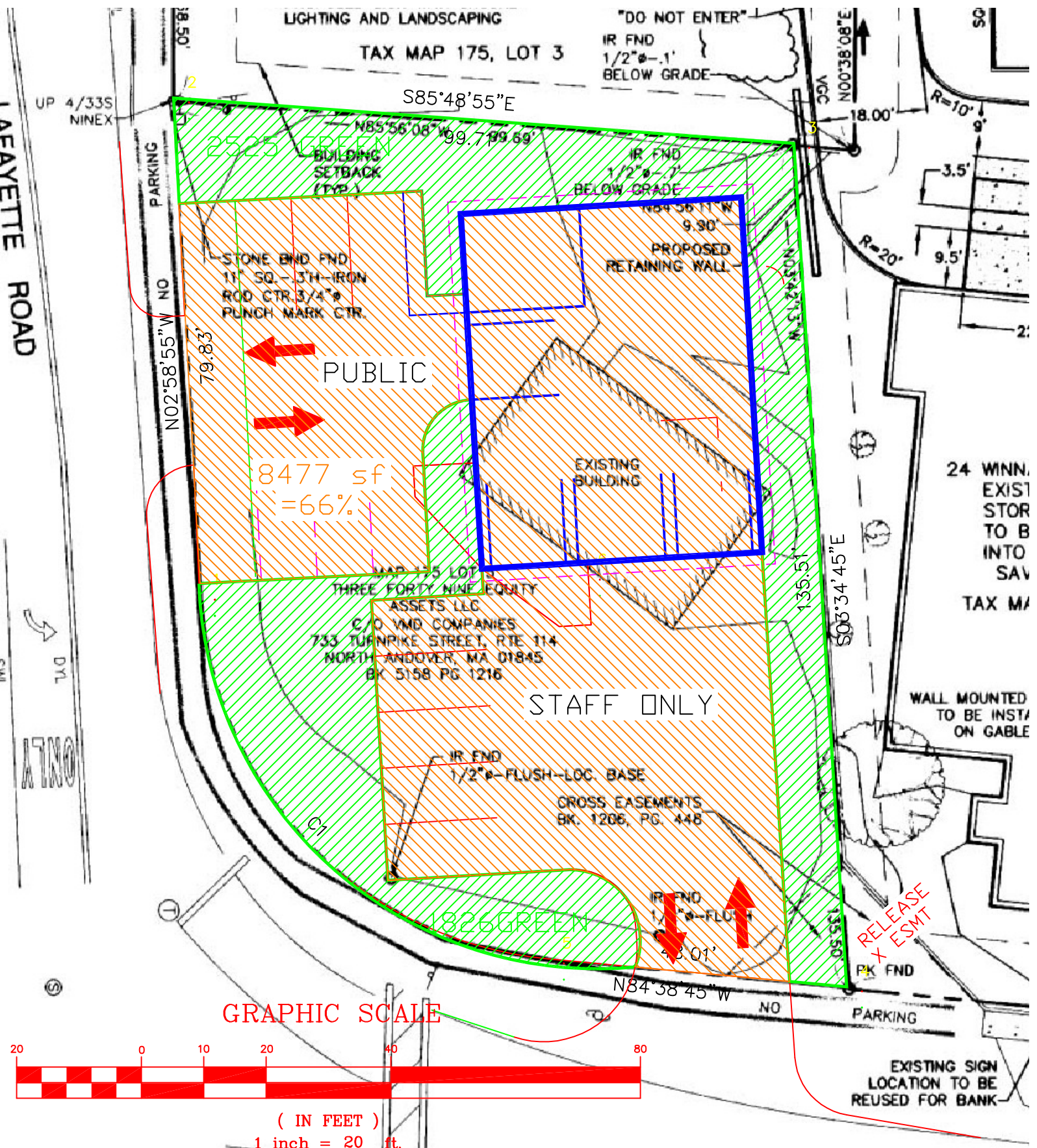
48.01'

"STOP"

PK NAIL FOUND
FLUSH
3/21/2019 (HELD)

12" HDPE





TITLE X

PUBLIC HEALTH

CHAPTER 147-A

HAZARDOUS WASTE MANAGEMENT

Section 147-A:1

147-A:1 Repealed by 1986, 202:29, V, eff. Jan. 2, 1987. –

Section 147-A:2

147-A:2 Definitions. –

In this chapter, the following words shall have the following meanings:

I. [Repealed.]

I-a. "Abutter" means any person who owns property adjacent to, or across a road, railroad, or stream from the property on which a hazardous waste facility will be permitted.

I-b. "Commissioner" means the commissioner of environmental services.

II. "Compliance schedule" means the timetable for meeting operator permit requirements.

II-a. "Department" means the department of environmental services.

III. "Disposal" means the discharge, deposit, incineration, injection, dumping, spilling, leaking or placing of any waste into or onto any land or water so that the waste or any constituent of the waste may enter the environment, be emitted into the air, or be discharged into any waters, including groundwaters.

III-a. [Repealed.]

IV. "Facility" means a location at which hazardous waste is subjected to treatment, storage or disposal and may include a facility where hazardous waste has been generated.

V. "Generation" means the act of producing hazardous waste materials.

VI. "Generator" means any person who owns or operates a facility where hazardous waste is generated.

VII. "Hazardous waste" means a solid, semi-solid, liquid or contained gaseous waste, or any combination of these wastes:

(a) Which, because of either quantity, concentration, or physical, chemical, or infectious characteristics may:

(1) Cause or contribute to an increase in mortality or an increase in irreversible or incapacitating reversible illness; or

(2) Pose a present or potential threat to human health or the environment when improperly treated, stored, transported, disposed of or otherwise mismanaged.

(b) Or which has been identified as a hazardous waste by the department using the criteria established under RSA 147-A:3, I or as listed under RSA 147-A:3, II. Such wastes include, but are not limited to, those which are reactive, toxic, corrosive, ignitable, irritants, strong sensitizers or which generate pressure through decomposition, heat or other means. Such wastes do not include radioactive substances that are regulated by the Atomic Energy Act of 1954, as amended, or household pharmaceutical wastes collected pursuant to RSA 318-E.

VIII. "Hazardous waste management" means the systematic control of the generation, collection, sorting, storage, processing, treatment, recovery and disposal of hazardous waste.

IX. "Imminent hazard" means any condition or practice which presents an immediate and substantial threat to human health or the environment.

IX-a. [Repealed.]

X. "Manifest" means the form used for identifying the origin, quantity, composition, routing and destination of hazardous waste.

X-a. [Repealed.]

X-b. "Mortgage" means a mortgage lien, tax lien, or other lien or encumbrance securing the payment of money or performance of an obligation.

XI. "Operator" means any person who, either directly or indirectly, operates or otherwise controls or directs activities at a facility.

XI-a. "Owner" means any person who, either directly or indirectly owns a facility. The term "owner" does not include a person who, without participation in the management or actual operation of a facility, holds indicia of ownership primarily to protect a mortgage on real property on which a facility is located or a security interest in personal property located at the facility.

XII. "Person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, United States government or any agency thereof, political subdivision of the state, or any interstate body.

XII-a. "Spent material" means any material that has been used and, as a result of contamination, can no longer serve the purpose for which it was produced without processing.

XII-b. "Serious bodily injury" means any harm to the body which causes severe, permanent or protracted loss of or impairment to the health or the function of any part of the body.

XIII. "Storage" means the containment of hazardous wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of the hazardous wastes.

XIII-a. "Tax lien" means a tax lien arising under RSA 80:19, the rights acquired by the grantee in a tax sale pursuant to RSA 80:20-RSA 80:42-a, and a tax lien acquired or transferred pursuant to RSA 80:58-RSA 80:86.

XIV. "Trade secret" means any confidential formula, pattern, device or compilation of information which is used in the employer's business and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. A trade secret is known to the employer and those employees to whom it is necessary to confide it.

XIV-a. [Repealed.]

XV. "Transport" means the movement of hazardous wastes from the point of generation to any intermediate points and, finally, to the point of ultimate storage or disposal.

XVI. "Transporter" means any person who transports hazardous waste.

XVII. "Treatment" means any process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize the waste or to render the waste not hazardous, safer for transport, amenable to recovery, amenable to storage or reduced in volume.

XVIII. "Waste" means any matter consisting of: garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other spent, discarded or abandoned material including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include domestic sewage, irrigation return waters, wastewater discharges in compliance with applicable state or federal permits, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended.

Source. 1981, 413:2; 567:2. 1983, 137:1-3; 227:2, 3, 20; 291:1, I. 1986, 119:1; 202:6, I(e), 29, VI. 1989, 398:1. 1990, 253:1. 1991, 226:1. 1993, 159:2; 323:10. 1994, 199:10, 11. 1996, 228:31, 32, 107. 1998, 64:1-3. 1999, 53:6, eff. July 20, 1999. 2012, 83:1, eff. July 22, 2012. 2016, 214:3, eff. Aug. 6, 2016.

Section 147-A:2-a

147-A:2-a Repealed by 1999, 53:6, IV, eff. July 20, 1999. –

Section 147-A:3

147-A:3 Rulemaking. –

The commissioner shall adopt rules, pursuant to RSA 541-A and after public hearing, relative to:

I. Criteria for the determination of whether any waste or combination of wastes is hazardous for the purposes of this chapter. "Pesticides" as defined in RSA 430 are subject to this chapter only to the extent that they are hazardous wastes.

II. A listing of wastes or combinations of wastes which are deemed to be hazardous.

III. Standards and procedures for the safe operation and maintenance of hazardous waste facilities, including qualifications required for personnel of hazardous waste facilities.

- IV. The storage, treatment, containerization, transportation, and disposal of hazardous wastes; provided, however, that no rule shall be adopted or applied so as to impose any transporter permitting program or requirement.
- V. A manifest system for tracking hazardous wastes from the point of generation to the point of treatment, storage or disposal.
- VI. Procedures and requirements for the record keeping and reporting of the generation, storage, treatment, or disposal of hazardous wastes.
- VII. Procedures for the immediate reporting of hazardous waste spills.
- VIII. Information required in operator permit applications and transporter registrations.
- IX. The terms and conditions under which the department shall issue, modify, suspend, revoke, deny, or approve the transfer of permits or registrations required by this chapter. Actions required by the department may include, but are not limited to, monitoring, contingency plans, closure, and evidence of financial responsibility.
- IX-a. Criteria for determining the suitability of proposed hazardous waste facility sites.
- X. A sliding scale for operator permit application fees, based on the cost of processing applications.
- XI. Compliance schedules for operator permits.
- XII. Establishment of minimum qualifications and procedures for persons providing hazardous waste cleanup, emergency response or other services related to the effective implementation of this chapter and RSA 147-B.
- XIII. Tanks and all associated appurtenances used to store, transfer, or otherwise contain regulated substances as defined in section 9001(2)(A) of the Federal Resource Conservation and Recovery Act as amended in 1984 and hazardous waste as defined in rules adopted under RSA 147-A:3, except such tanks and appurtenances subject to the provisions of RSA 146-C. Rules regarding such tanks shall include, but are not limited to, tank standards and operating procedures, registration requirements, compliance schedules, enforcement and inspection, and requirements for closure, financial responsibility, and corrective actions.
- XIV. Procedures and standards for certification of laboratories, including but not limited to the form and content of approval and certification application forms, analytical techniques to be employed, standard collection and testing procedures, performance on proficiency test samples, as well as qualifications for laboratory personnel. The procedures and standards shall be no less stringent than the rules and regulations of the Environmental Protection Agency for the certification of hazardous waste testing laboratories.
- XV. Procedures and standards for provisional certification of laboratories.
- XVI. Procedures and conditions under which certification of hazardous waste testing laboratories may be revoked, suspended, or modified.
- XVII. Information to be disclosed when tests are subcontracted.
- XVIII. Procedures and criteria for laboratory recertification.
- XIX. Procedures for the certification of laboratories which have been certified by other states.
- XX. Procedures for approval of alternate testing methodology.
- XXI. Fees for certification, including rules for accounting of the fees.
- XXII. Procedures and standards for testing of hazardous waste under any expanded certification program.
- XXIII. A time frame for the completion of the certification process.
- XXIV. Standards for the case-by-case establishment of maximum contaminant levels for unregulated contaminants.
- XXV. Conditional exemptions from the permitting, registration, and siting requirements of RSA 147-A:4 and RSA 147-A:6.
- XXVI. Administration of a hazardous waste coordinator certification program and alternate programs pursuant to RSA 147-A:5, III, including criteria relating to education and experience and the procedures for initial certification of hazardous waste coordinators as well as continuing education requirements for renewals, and associated fees.
- XXVII. Procedures and criteria for administration of a small quantity hazardous waste generator self-certification program and associated fees pursuant to RSA 147-A:5, IV.
- XXVIII. Procedures for collection of the hazardous waste generator notification fee for new generators of hazardous waste specified in RSA 147-A:6-a.

Source. 1981, 413:2. 1983, 137:4; 227:3. 1985, 287:7. 1986, 120:2; 202:6, I(e). 1987, 143:2. 1989, 398:2. 1990, 208:12. 1995, 308:30-32. 1996, 228:107, 110. 1999, 52:1; 53:1. 2002, 87:3. 2003, 148:3, eff. July 1, 2003. 2005, 168:1, eff. Aug. 20, 2005. 2020, 37:7, eff. July 29, 2020.

Section 147-A:4

147-A:4 Operator Permits. –

The department shall administer and enforce the hazardous waste operator permit program.

I. Any person constructing, substantially altering, or operating a hazardous waste facility or disposing of hazardous waste on or after July 1, 1980, shall first obtain a permit from the department, unless conditionally exempted by rules adopted pursuant to RSA 147-A:3, XXV.

I-a. The department shall notify the governing body of the municipality in which the facility is or may be located when a new permit application is received by the department. This requirement shall apply to permit applications for treatment, storage, and disposal facilities. A copy of the application shall be included with the notification.

II. A permit application fee not to exceed \$7,500 shall accompany each permit, permit modification, and permit renewal application. Permit fees received by the department under this section shall be placed in the hazardous waste cleanup fund as established under RSA 147-B:3, shall be accounted for separately and shall be used in processing applications and enforcing and implementing conditions of a permit.

II-a. The department may conduct such reasonable studies and investigations and employ such consultants as it deems appropriate to carry out the purposes of this section; provided, however, that such studies and investigations are identified in rules adopted pursuant to this chapter. The cost of such studies, investigations, and consultants shall be borne by the applicant.

II-b. A decision by the commissioner to issue a permit for a hazardous waste facility shall not be influenced by the fact that the applicant acquired land or an interest therein for the purpose of constructing such facility.

II-c. Applications for permits shall be upon such forms and shall include such information as the department requires by rules adopted under RSA 147-A:3. The application information shall include, but not be limited to, a performance history of the applicant and of its officers and directors relative to the operation, financial security, and ownership of all facilities owned or operated by the applicant. Whenever requested by the department, the attorney general shall conduct a background investigation of the performance history and criminal record of the applicant and of its officers and directors, if any, and make a report to the department. The cost of any investigation under this paragraph shall be borne by the applicant.

II-d. The department may deny a permit application under this section to a person if any of the following applies:

(a) The person fails to demonstrate sufficient reliability, expertise, integrity and competence to operate a hazardous waste facility.

(b) The person has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the 5 years before the date of the permit application.

(c) In the case of a corporation or business entity, if any of its officers, directors, partners, key employees or persons or business entities holding 10 percent or more of its equity or debt liability has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the 5 years before the date of the permit application.

III. If the application is approved, a permit shall be issued for 5 years, subject to modification, suspension, or revocation by the department. An applicant for permit renewal shall demonstrate that the facility complies with rules adopted by the department under RSA 147-A.

IV. Any permit issued under this section may be modified, suspended, or revoked by the department at any time if the permittee fails to comply with the terms and conditions of the permit; provided, no permit shall be modified, suspended or revoked until the department has provided the affected party with the opportunity for an adequate hearing and with written notice of the intent of the department to take action and the reasons for the action.

IV-a. No permit issued by the department under this section shall be transferred by the permittee to any person without the prior written approval of the department. Applications for the transfer of permits shall be upon such forms and shall include such information as the department requires by rules adopted under RSA 147-A:3, IX. The application information shall include, but not be limited to, a performance history of the applicant and of its officers and directors relative to the operation, financial security, and ownership of all facilities owned or operated by the applicant. Whenever requested by the department, the attorney general shall conduct a background investigation of the performance history and criminal record of the applicant and of its officers and directors, if any, and make a report to the department. The applicant shall also submit a statement that the

proposed facility is consistent with the provisions of a district plan. The cost of any investigation under this paragraph shall be borne by the applicant. The department shall hold a public hearing no later than 30 days prior to making any final decision on an application to transfer a permit issued under this section. Notice of such public hearing shall be published in a newspaper of local circulation within the region of the public or private hazardous waste facility at least 2 weeks prior to such public hearing. The applicant shall notify abutters of the request for transfer of a permit under this section.

V. If meeting the requirements for the issuance of a permit or complying with the conditions of a permit would, in the opinion of the department, cause undue hardship without equal or greater benefit to the public, the department may issue an interim permit. The interim permit shall contain a compliance schedule for meeting the requirements of this section and conditions the department deems necessary. Renewal or extensions of the compliance schedule may be given only after opportunity for public hearing and comment in the town or city affected by each renewal or extension. No interim permit shall be granted to a person who is causing a danger to public health or safety.

VI. No person shall construct a hazardous waste facility after July 1, 1979, without an interim permit issued by the department. The department shall include terms and conditions in the interim permit as it deems necessary, utilizing existing rules relative to solid waste and, in the department's discretion, standards as proposed by the Environmental Protection Agency as published in the Federal Register under the authority granted in Subtitle C of 42 U.S.C., Section 6901 et seq.

VII. In administering this section, the department shall be exempt from the provisions of RSA 541-A:29, II, but shall act on all matters before it under this section in as expeditious a manner as the law permits.

Source. 1981, 413:2. 1983, 137:5, 6; 227:3; 455:8. 1986, 158:1-3; 202:6, I(e). 1989, 398:3, 4. 1991, 226:2. 1994, 412:13. 1996, 228:106, 107, 110. 1997, 269:1. 1998, 64:4. 1999, 53:2, eff. July 20, 1999. 2007, 219:1, eff. July 1, 2007.

Section 147-A:4-a

147-A:4-a Repealed by 2020, 37:4, XI, eff. July 29, 2020. –

Section 147-A:4-b

147-A:4-b Disclosure of Ownership. –

Any application for a permit under RSA 147-A:4 shall be signed under oath by a representative of the applicant and shall contain the following information:

I. Name and address of the applicant.

II. If the applicant is a corporation, the state of incorporation, the address of its principal place of business, and the names and addresses of its directors, officers, and shareholders; if the applicant is a partnership, the state of formation, the address of its principal place of business, and the names and addresses of its partners, whether general or limited; and if the applicant is any other kind of association, the state of formation, the address of its principal place of business, and the names and addresses of its members or participants.

III. The exact location where the applicant intends to conduct the business for which it is seeking the permit.

IV. Such financial information as the commissioner may require by rules adopted under RSA 147-A:3.

Source. 1989, 398:5. 1996, 228:110, eff. July 1, 1996.

Section 147-A:5

See Emergency Order #29 (NH LEGIS E.O. 2020-29-Emerg. (2020, 2029:1.)), issued pursuant to Executive Order 2020-04 (NH LEGIS E.O. 2020-04 (2020, 1004:1.)) as extended by Executive Orders 2020-05 (NH LEGIS E.O. 2020-05 (2020, 1005:1.)); 2020-08 (NH LEGIS E.O. 2020-08 (2020, 1008:1.)); 2020-09 (NH LEGIS E.O. 2020-09 (2020, 1009:1.)); 2020-010 (NH LEGIS E.O. 2020-010 (2020, 1010:1.)); 2020-014 (NH LEGIS E.O. 2020-014 (2020, 1014:1.)); 2020-015 (NH LEGIS E.O. 2020-015 (2020, 1015:1.)); 2020-016 (NH

LEGIS E.O. 2020-016 (2020, 1016:1.)); 2020-017 (NH LEGIS E.O. 2020-017 (2020, 1017:1.)); 2020-018 (NH LEGIS E.O. 2020-018 (2020, 1018:1.)); 2020-020 (NH LEGIS E.O. 2020-020 (2020, 1020:1.)); 2020-021 (NH LEGIS E.O. 2020-021 (2020, 1021:1.)); 2020-022 (NH LEGIS E.O. 2020-022 (2020, 1022:1.)); 2020-023 (NH LEGIS E.O. 2020-023 (2020, 1023:1.)); 2020-024 (NH LEGIS E.O. 2020-024 (2020, 1024:1.)); 2020-025 (NH LEGIS E.O. 2020-025 (2020, 1025:1.)); 2021-01 (NH LEGIS E.O. 2021-01 (2021, 1001:1.)), related to the COVID-19 State of Emergency, for potential impact on the terms of this section.

147-A:5 Terms and Conditions of Operator Permits; Facility Personnel; Certified Hazardous Waste Coordinator Program; Small Quantity Hazardous Waste Generator Self-Certification Program. –

I. The department shall not issue a permit to a hazardous waste facility unless the facility meets the terms and conditions required in rules adopted by the department. These terms and conditions include, but are not limited to, evidence of financial responsibility in the amount set by the department after consultation with the commissioner of insurance. This amount shall be whatever is necessary to:

- (a) Protect the public health and welfare and the environment; and
- (b) Insure that appropriate measures will be taken to prevent present and future damage to the public health and safety or to the environment, in the event that the operations at the facility are abandoned, interrupted, or stopped.

II. Personnel employed in the operation of any facility shall meet the qualifications concerning training as deemed necessary by the department, after a review of the characteristics, properties, and volume of hazardous wastes to be treated, stored, or disposed of at the facility.

III. (a) Each hazardous waste generator that generates more than 220 pounds of hazardous waste per month shall have on staff at the facility where the hazardous waste is generated a hazardous waste coordinator certified by the department. The certified hazardous waste coordinator shall be responsible for ensuring that the generator is aware of and in compliance with applicable requirements relating to hazardous waste management, including but not limited to storage, transportation, and disposal. Certification shall not be transferable. Initial certification shall be valid for one year and may be renewed for subsequent one-year terms. The department may charge a reasonable fee to cover expenses for education and training programs that fulfill the initial certification and continuing education requirements. The commissioner may authorize alternative certified hazardous waste coordinator programs provided the program demonstrates equivalent on-site staffing, training, continuing education, and management organization to meet the responsibilities of this paragraph.

(b) Each application for initial or renewal of a hazardous waste coordinators certification shall be accompanied by a non-refundable fee of \$125 per year to cover department expenses for conducting the certification program.

IV. (a) Each hazardous waste generator that generates less than 220 pounds (100 kilograms) of hazardous waste per month shall submit to the department, every 3 years, a self-certification declaration stating that the facility is in compliance with the small quantity hazardous waste generator rules. The declaration shall be on a form provided by the department.

(b) Each small quantity hazardous waste generator shall pay non-refundable fees at a rate of \$60 per year for the period of January 1, 2004 to June 30, 2007, and at a rate of \$90 per year beginning July 1, 2007, to cover department expenses for conducting the self-certification program and hiring of program staff. Total fees due for each year shall be submitted with the self-certification declaration form required under subparagraph (a).

(c) If the self-certification fee is not paid within 60 days of the due date, interest shall be assessed at a rate established by the commissioner, and shall be deposited into the cleanup fund. The commissioner may waive all or any portion of interest for good cause.

(d) Political subdivisions of the state shall be exempt from the fee for submitting a self-certification declaration.

(e) Small quantity hazardous waste generators that are participants in a department-developed multi-media compliance assurance program referred to as an environmental results program, or ERP, shall be exempt from this paragraph.

Source. 1981, 413:2. 1983, 227:3. 1986, 202:6, I(e). 1996, 228:107. 2002, 87:1, 2. 2003, 148:1, 2, eff. July 1, 2003. 2005, 168:2, eff. Aug. 20, 2005; 254:4, eff. Sept. 12, 2005. 2007, 219:2, eff. July 1, 2007.

Section 147-A:5-a

147-A:5-a Hazardous Waste Testing Laboratory Certification. –

I. Any laboratory conducting tests for the presence of hazardous waste, other than water testing laboratories

accredited under RSA 485:44, may apply for certification by the department.

II. The department shall establish and administer a program to certify on an annual basis the facilities, techniques, collection procedures, testing methods, analytical performance, and qualifications of personnel of any laboratory for the purposes of RSA 147-A:5-a, I. The program shall be no less stringent than the United States Environmental Protection Agency's rules and regulations for the certification of hazardous waste laboratories. Certification shall be granted on an analyte-by-analyte basis and shall be based on the capability of the laboratory to analyze samples with precision and accuracy.

III. The participation of laboratories in the certification program established under this section shall be voluntary.

IV. Provisional certification may be granted on terms and conditions as set forth in rules adopted by the department in accordance with RSA 541-A.

V. The department shall approve and certify laboratories certified in other states upon request, provided that the certification program in such states is at least equivalent to that enforced nationally by the United States Environmental Protection Agency. The department may inspect or otherwise verify that the applying laboratory is performing at the certification level.

VI. An alternate laboratory test method may be acceptable only if it is equivalent to the prescribed test in both accuracy and reproducibility as it relates to the determination of compliance with any maximum contaminant level. The department shall certify an alternate laboratory method if the method has been approved by the United States Environmental Protection Agency.

VII. Certification may be denied, revoked, suspended, or modified as determined by rules of the department. A laboratory which has had certification revoked or suspended shall be recertified at such time as it again meets criteria for certification, and requests recertification.

VIII. Changes in laboratory ownership, location, personnel, methodology, or other factors significantly affecting the performance of analyses for which it was originally certified shall be reported to the certification officer of the department of environmental services within 48 hours of the change.

IX. A laboratory may subcontract tests which it is not certified to perform to another laboratory which is so certified, provided that the test report clearly indicates which tests were subcontracted and that laboratory test records which specify the name and address of the laboratory which performed the work are maintained and made accessible to the department upon request.

X. Nothing in this section shall be construed to limit or control laboratory services which are offered or performed outside the scope of the certification program provided for in RSA 147-A:5-a, I and II.

Source. 1987, 143:1. 1996, 228:106, 107. 2004, 116:6, eff. May 17, 2004.

Section 147-A:5-b

147-A:5-b Fees; Advertising. –

I. The commissioner shall adopt rules under RSA 541-A, after public hearing, establishing a schedule of reasonable fees to be paid by any laboratory applying for approval and certification, including any travel and consultant costs related to certification of out-of-state laboratories.

II. The schedule of fees shall be designed to recover the direct costs and travel expenses associated with the certification services provided under RSA 147-A:5-a, and such fees shall be available to the department to be used to defray the cost of travel and associated expenses for such services, including any additional travel and consultant expenses related to certification of out-of-state laboratories. Funds received shall be deposited in a special account maintained by the department of environmental services to offset the costs of the inspection program. Any balance remaining at the end of the fiscal year shall lapse to the general fund. This paragraph shall not be construed to mean that all agency costs associated with the certification program, such as agency overhead, facilities, and staff services are to be prorated and recovered by fees.

III. A laboratory shall provide each prospective New Hampshire client with a list which clearly indicates the specific analytes which the laboratory is certified to test. In the event that a client has paid a fee to a laboratory in anticipation of testing services before the receipt of said test sampling materials, and the client subsequently determines upon receipt of the test materials that the laboratory is not certified to provide testing services to meet his needs, the client may cancel his order for any testing services which have not yet been performed, and the laboratory shall make full refund to the client. Test reports shall clearly identify those specific analytes for

which a laboratory has certification and shall specifically identify any analyses which were subcontracted to other laboratories.

Source. 1987, 143:1. 1996, 228:106, 110, eff. July 1, 1996.

Section 147-A:6

147-A:6 Transporter Registration. –

The department shall administer and enforce the transporter program.

I. Any transporter of hazardous waste within the state shall annually register with the department using forms provided by the department before engaging in the transportation of hazardous wastes, unless conditionally exempted by rules adopted pursuant to RSA 147-A:3, XXV.

II. Information submitted with each registration application and registration renewal application shall include:

- (a) Transporter's name;
- (b) Mailing address of transporter's office;
- (c) Telephone number of the transporter's office;
- (d) The name and title of a contact person;
- (e) The transporter's U.S. EPA identification number;
- (f) The transporter's U.S. DOT motor carrier census number or interstate commerce commission number;
- (g) The Research and Special Programs Administration of the United States Department of Transportation registration number, if applicable;
- (h) An attestation that the transporter is in compliance with the financial responsibility requirements of 49 C.F.R. section 387.9.

III. The registration period shall be from July 1, of a given year, to June 30, of the following year. The division shall develop procedures to expedite the registration of transporters who wish to initiate operations in the state during the registration period.

IV. Nothing in this section shall effect in any way any authority the state may have under other statutes to enjoin the operations of a transporter that has been convicted of a violation of a criminal statute relating to its hazardous waste transporter operations.

V. (a) The department may conduct reasonable investigations to determine whether applicants and registrants have sufficient reliability, expertise, integrity, and competence to transport hazardous waste.

(b) Transporters shall notify the department of any change in the information submitted pursuant to paragraph II.

(c) The department may modify, suspend, or revoke a transporter registration if the transporter violates any provision of RSA 147-A, any rules adopted by the commissioner pursuant to RSA 147-A, or any rules adopted by the commissioner of the department of safety pursuant to RSA 21-P:17.

(d) The department may deny a registration application or registration renewal application or suspend or revoke a registration if any of the following apply:

- (1) The applicant or registrant fails to demonstrate sufficient reliability, expertise, integrity, and competence to transport hazardous waste.
- (2) The applicant or registrant has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the 5 years before the date of registration application or registration renewal application.
- (3) In the case of a corporation or business entity, any of its officers, directors, partners, key employees, or persons or business entities holding 10 percent or more of its equity or debt liability has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the 5 years before the date of the registration application or registration renewal application.

Source. 1981, 413:2. 1983, 137:7, 227:3. 1986, 158:4, 5; 202:6, I(e). 1989, 300:1. 1990, 3:76, 77. 253:2, 13. 1991, 112:1. 1992, 263:4. 1995, 308:33. 1996, 228:106, 107. 1999, 52:2-4, eff. July 20, 1999; 53:4, eff. July 20, 1999.

Section 147-A:6-a

147-A:6-a Initial Notification Fee. –

I. Each initial notification of hazardous waste activity filed by any new hazardous waste generator in New

Hampshire shall be accompanied by a non-refundable fee of \$150.

II. Political subdivisions of the state shall be exempt from this notification fee.

III. Small quantity hazardous waste generators that are participants in a department-developed multi-media compliance assurance program referred to as an environmental results program, or ERP, shall be exempt from this notification fee.

Source. 2003, 148:4, eff. July 1, 2003. 2005, 254:5, eff. Sept. 12, 2005. 2007, 219:3, eff. July 1, 2007.

Section 147-A:7

147-A:7 Inspections; Right of Entry. –

I. For the purpose of determining compliance with this chapter, any rule adopted by the department relative to this chapter or any permit issued by the department, an employee or an authorized representative of the department may, upon presentation of appropriate credentials and at any reasonable time:

(a) Enter any hazardous waste facility;

(b) Inspect, photograph, and obtain samples of any waste, including samples from containers or vehicles which the department has reason to believe contain hazardous wastes; and

(c) Inspect and copy any records, information or test results relating to wastes.

II. Information obtained by the department under this chapter which, in the judgment of the federal Environmental Protection Agency or the department, constitutes a trade secret, shall not be disclosed to the public without notice to the owner of the trade secret and an opportunity for hearing. The department may provide information relating to trade secrets to the Environmental Protection Agency, provided that the Environmental Protection Agency guarantees the same degree of confidentiality provided by the department.

Source. 1981, 413:2. 1983, 227:3. 1986, 202:6, I(e). 1989, 6:1. 1996, 228:107, eff. July 1, 1996.

Section 147-A:8

147-A:8 Official Investigation. –

I. The attorney general shall have the power to examine witnesses and documents and to request information for the purpose of enforcing the provisions of this chapter and the provisions of RSA 147-B.

II. If, during the course of any investigation under this chapter or RSA 147-B, the attorney general believes a person may have information or be in possession, custody or control of any document or other tangible object relevant to the investigation, before the institution of any court proceedings, the attorney general may serve upon the person a written demand for information; or a subpoena to appear and be examined under oath; or a subpoena duces tecum to appear and produce the documents or objects for inspection and copying. A written demand for information may be mailed to the person believed to have such information. A subpoena or subpoena duces tecum of the attorney general may be served by the person designated therein to serve it. The attorney general may administer an oath or affirmation to any person and conduct hearings in aid of any investigation under this chapter. Any testimony given by any person so sworn shall be subject to the pains and penalties of perjury.

III. Any subpoena issued pursuant to this chapter shall:

(a) Describe the nature of the investigation.

(b) Describe the documents or objects with sufficient definiteness to permit them to be fairly identified.

(c) Prescribe a reasonable time at which the person shall appear to testify or within which the documents or objects shall be produced, and advise the person that objections to or reasons for not complying with, the subpoena may be filed with the attorney general on or before that date.

(d) Specify a place for the taking of testimony or for production and designate a person who shall be custodian of the documents or objects.

IV. A written demand for information issued pursuant to this chapter shall:

(a) Describe the nature of the investigation.

(b) Describe the information sought in connection with that investigation.

(c) Prescribe a reasonable time for complying with the information demand, and advise the person that objections to or reasons for not complying with the information demand may be filed with the attorney general

on or before that date.

V. If a person objects to or fails to comply with the information demand, subpoena or subpoena duces tecum served upon him under this chapter, the attorney general may file in the superior court of the county in which the person resides or maintains his principal place of business or if the person is a nonresident and has no principal place of business within this state, in Merrimack county superior court, a petition for an order of the court to enforce the subpoena or information demand. Notice of hearing and a copy of the petition shall be served upon the person, who may appear in opposition to the petition. If the court finds reasonable cause to believe that there may have been a violation of any provision of this chapter or of RSA 147-B, and that the information, testimony, documents or objects sought are relevant to the investigation, it shall order the person to provide the information, to appear for testimony, or to produce the document or object for inspection and copying as demanded, subject to any modification of the subpoena or information demand the court prescribes.

Source. 1981, 413:2. 1986, 158:6, eff. July 27, 1986.

Section 147-A:9

147-A:9 Strict Liability of Owner, Operator, Generator, or Transporter. –

I. Any owner, operator, generator, or transporter who causes or suffers the treatment, storage, transportation or disposal of hazardous waste in violation of RSA 147-A or rules adopted or permits issued under RSA 147-A or RSA 106-A:17-RSA 106-A:19 or rules adopted by the commissioner of the department of safety under RSA 106-A:18 shall be strictly liable for costs directly or indirectly resulting from the violation relating to:

- (a) Containment of hazardous wastes;
- (b) Necessary cleanup and restoration of the site and the surrounding environment; and
- (c) Removal of the hazardous wastes.

I-a. Government entities, including their employees, shall not be liable for the release of hazardous waste during the lawful transportation of locally collected household hazardous waste over the byways of the state, to regional hazardous waste collection centers or in-state or out-of-state disposal facilities in the absence of willful, wanton or reckless conduct. In the event of a release during such transport, the department of environmental services shall be responsible for containment of household hazardous wastes, removal of the household hazardous wastes, necessary cleanup and restoration of the affected site and the surrounding environment, and any required evaluation, assessment, and monitoring associated with the release. Any costs associated with such containment, removal, cleanup, and restoration, and any required evaluation, assessment, and monitoring shall be a charge against the hazardous waste cleanup fund established in RSA 147-B:3.

II. The attorney general may bring an action to recover costs of containment, cleanup, or removal incurred by the department, the state, or both. This action may be brought in connection with an action for injunctive relief or in a separate action in the superior court. In connection with an action brought under this paragraph, the attorney general may obtain a prejudgment attachment in accordance with RSA 511-A to secure any judgment which may be recovered.

III. There shall be no implied cause of action for third party damages against any person under this section to the extent that the person's liability under this section is based solely on the person's ownership of a facility.

Source. 1981, 413:2. 1983, 227:3. 1986, 202:6, I(e). 1994, 199:12. 1996, 228:107, eff. July 1, 1996; 266:8, eff. June 10, 1996. 2006, 282:1, eff. Sept. 13, 2006.

Section 147-A:10

147-A:10 Confiscation of Property. –

I. Any property of a generator, owner, operator, or transporter including, but not limited to, vehicles, containers, documents and wastes, used in connection with the disposal, storage, treatment, or transportation of hazardous waste in violation of RSA 147-A or RSA 106-A:17-RSA 106-A:19 may be seized by the state. The property shall be stored as directed by the court so that the property may be used as evidence in a trial relating to the violation.

II. Within 14 days of seizure of any property, the attorney general shall file a libel in the superior court of the county in which the property was seized, requesting forfeiture of the property. The court shall issue a summons

requiring the state to send by certified mail a copy of the libel to the owner of the property and other persons appearing to have an interest in the property.

III. The superior court shall promptly hold a hearing which shall be conducted as a civil in rem action without a jury and shall order forfeiture of the property if the state establishes by a preponderance of the evidence that the owner knew or should have known that the property was used in the illegal treatment, transportation, storage or disposal of hazardous waste.

IV. The court may order the sale of the confiscated property or any other disposition, in the court's discretion as justice may require. After deducting the storage expenses, the proceeds from the sale of the confiscated property shall be transferred to the New Hampshire hazardous waste cleanup fund established under RSA 147-B.

Source. 1981, 413:2. 1994, 199:13, eff. July 23, 1994. 2014, 204:7, eff. July 11, 2014.

Section 147-A:11

147-A:11 Duty to Report. –

I. Any generator, owner, operator, transporter, or employee of a hazardous waste facility who becomes aware of any storage, treatment, or disposal of hazardous waste in violation of this chapter shall immediately report the violation to the department.

II. Any person who fails to give notice as required by RSA 147-A:11, I, shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

III. Each day of a continuing violation shall constitute a separate offense.

Source. 1981, 413:2. 1983, 227:3. 1986, 202:6, I(e). 1994, 199:14. 1996, 228:107, eff. July 1, 1996.

Section 147-A:12

147-A:12 Discrimination Prohibited. –

I. No employer shall discharge or discriminate against an employee because the employee has reported a violation of this chapter to the department as required by RSA 147-A:11, I.

II. Any employee who has been discharged or discriminated against in violation of RSA 147-A:12, I, may bring an action against the employer in the superior court for injunctive relief, and for compensatory and exemplary damages.

III. Reasonable attorney's fees shall be awarded to any employee who prevails in an action against his employer brought under RSA 147-A:12.

Source. 1981, 413:2. 1983, 227:3. 1986, 202:6, I(e). 1996, 228:107, eff. July 1, 1996.

Section 147-A:13

147-A:13 Imminent Hazard. –

Notwithstanding any other provision of this chapter, the department, upon receipt of information that the generation, storage, treatment, transportation, or disposal of any waste may present an imminent and substantial hazard to human health or to the environment, may take action as it determines to be necessary to protect human health or the environment. The action the department may take includes, but is not limited to:

I. Issuing an order directing the owner or operator of a hazardous waste facility or the custodian of waste constituting a hazard to take necessary steps to eliminate the hazard. The department may order the permanent or temporary cessation of operations at a facility. Orders of the department issued under this section shall be effective immediately. Any person to whom an order is directed shall immediately comply, but may appeal the order to the waste management council in accordance with the provisions of this chapter.

II. Contracting for and supervising the cleanup of a hazardous waste spill which the department determines is an imminent hazard, except as provided in RSA 154:7. The department may take action as necessary to prevent damage to human health or the environment; or

III. Requesting the attorney general to bring an action for injunctive relief, including a mandatory injunction.

Source. 1981, 413:2. 1983, 227:3. 1986, 202:6, I(e). 1989, 341:5. 1994, 199:15. 1996, 228:107. 1999, 52:5, eff. July 20, 1999.

Section 147-A:13-a

147-A:13-a Hazardous Waste Sites. –

- I. If a hazardous waste site is discovered which poses an imminent threat to the public health, safety, and welfare, the commissioner of environmental services may, after court authorization or order, make application to the governor for funds to clean up such wastes under the authority of RSA 9:13-d.
- II. Authorization for expenditures for such purpose shall be as prescribed in RSA 9:13-d.
- III. The attorney general shall institute legal proceedings to obtain reimbursement for any moneys so expended by the state under this section.

Source. 1986, 198:22, eff. Aug. 2, 1986.

Section 147-A:14

147-A:14 Enforcement. –

The department may:

- I. Issue an order to any person in violation of this chapter, a permit issued under this chapter, or a rule adopted under this chapter to comply with this chapter, the permit, or the rule, and require such remedial measures as may be necessary; or
- II. Request the attorney general to bring a civil action in superior court for appropriate relief, including a temporary or permanent injunction or both, to enforce any provision of this chapter or any permit, rule, or order issued pursuant to this chapter.

Source. 1981, 413:2. 1983, 137:8; 227:3. 1986, 202:6, I(e). 1996, 228:107, eff. July 1, 1996.

Section 147-A:14-a

147-A:14-a Recording of Orders. – Any order issued by the department pursuant to this chapter may be recorded in the registry of deeds for the country in which the subject facility is situated. A recorded order shall run with the land, provided that an appropriate description of the land involved including the accurate name of the owner thereof shall be included in the order. No fee shall be charged for recording an order; however, a fee may be charged for discharging an order.

Source. 1983, 137:9. 1986, 202:6, I(e). 1996, 228:107, eff. July 1, 1996.

Section 147-A:15

147-A:15 Appeals. –

- I. Any person aggrieved by an action of the department may appeal to the waste management council established under RSA 21-O:9 for review of:
 - (a) A decision of the department to grant, deny, modify, suspend or revoke an operator or transporter permit; or
 - (b) An order issued by the department relative to this chapter.
- II. The waste management council may affirm, deny or modify the decision or order of the department. The council shall conduct its appeals in accordance with rules adopted under RSA 21-O:14.
- III. Rehearings and appeals from a decision of the council shall be in accordance with RSA 541.

Source. 1981, 413:2. 1983, 227:3; 291:1, I. 1986, 202:6, I(e). 1989, 341:6. 1996, 228:107, eff. July 1, 1996.

Section 147-A:16

147-A:16 Criminal Penalty; Fine. –

I. Any person shall be guilty of a class B felony if a natural person, or guilty of a felony if any other person who knowingly:

- (a) Violates any provision of RSA 147-A or any rule adopted by the commissioner relative to RSA 147-A;
- (b) Violates any term or condition of a permit or an order issued under RSA 147-A;
- (c) Makes or certifies a material false statement relative to any document required by RSA 147-A; or
- (d) Tampers with a monitoring device or fails to comply with a monitoring method required under RSA 147-A.

II. Notwithstanding RSA 651:2, a natural person may, in addition to any sentence of imprisonment, probation or conditional discharge, be fined not more than \$50,000 if found guilty of any violation of RSA 147-A:16, I. Each day of violation shall constitute a separate offense.

III. Criminal penalties and fines imposed under RSA 147-A:16 shall be paid to the New Hampshire hazardous waste cleanup fund established under RSA 147-B:3.

IV. Notwithstanding RSA 106-B:15 or any other provision of law to the contrary, police employees of the department of safety are authorized to conduct investigations, serve criminal process, and make arrests for violations of this chapter and any rules adopted under this chapter.

V. Notwithstanding paragraph I, failure to measure or record liquid hazardous waste by transporters in accordance with RSA 147-A:6 shall be a violation.

Source. 1981, 413:2. 1983, 137:10; 227:3. 1986, 202:6, I(e). 1989, 300:2. 1990, 65:1. 1996, 228:110, eff. July 1, 1996.

Section 147-A:16-a

147-A:16-a Knowing Endangerment; Penalties. –

I. Any person who treats, stores, transports, causes to be transported, disposes of or otherwise handles any hazardous waste in knowing violation of any material condition or requirement of such permit or in knowing violation of any material condition or requirement of any applicable regulations or standards and any person who knowingly:

- (a) Transports or causes to be transported any hazardous waste to an unpermitted facility;
- (b) Treats, stores or disposes of any hazardous waste without a permit;
- (c) Omits material information or makes any false material statement or representation in any application, label, manifest, records, report, permit or other document filed, maintained or used for purposes of compliance with regulations promulgated by the department;
- (d) Generates, stores, treats, transports, disposes of, exports or otherwise handles any hazardous waste and who knowingly destroys, alters, conceals or fails to file any record, application, manifest, report or other document required to be maintained or filed for purposes of compliance with regulations promulgated by the department;
- (e) Transports or causes to be transported any hazardous waste without a manifest; or
- (f) Exports a hazardous waste:

(1) without the consent of the receiving country, or

(2) where there exists an international agreement between the United States and the government of the receiving country establishing notice, export and enforcement procedures for the transportation, treatment, storage and disposal of hazardous wastes, in a manner which is not in conformance with such agreement and who knew at the time that another person would thereby be placed in imminent danger of death or serious bodily injury shall be guilty of knowing endangerment.

II. A natural person found guilty of knowing endangerment shall be guilty of a class A felony and, notwithstanding the provisions of RSA 651:2, may be fined not more than \$250,000 in addition to any sentence of imprisonment, probation or conditional discharge. Any other person found guilty of knowing endangerment shall be guilty of a felony and subject to a fine of not more than \$1,000,000.

III. In this section, "hazardous waste" means a solid, semi-solid, liquid or contained gaseous waste, or any combination of these wastes:

- (a) Which, because of either quantity, concentration, or physical, chemical or infectious characteristics may:
 - (1) cause or contribute to an increase in mortality or an increase in irreversible or incapacitating reversible illness; or
 - (2) pose a present or potential threat to human health or the environment when improperly treated, stored,

transported, disposed of or otherwise mismanaged; or

(b) Which has been identified as a hazardous waste by the department using the criteria established under RSA 147-A:3, I or as listed under RSA 147-A:3, II. Such wastes include, but are not limited to, those which are reactive, toxic, corrosive, ignitable, irritants, strong sensitizers or which generate pressure through decomposition, heat or other means. Such wastes do not include radioactive substances that are regulated by the Atomic Energy Act of 1954, as amended.

Source. 1993, 159:3. 1996, 228:106, 107, eff. July 1, 1996.

Section 147-A:16-b

147-A:16-b Special Rules Relative to Knowing Endangerment. –

I. In determining whether a natural person knew that his or her conduct placed another in imminent danger of death or serious bodily injury, knowledge possessed by another may not be attributed to that person.

Circumstantial evidence may be used to prove possession of actual knowledge.

II. In addition to other available affirmative defenses, it is an affirmative defense that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

(a) an occupation, a business or a profession; or

(b) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person has been made aware of the risks involved prior to giving consent.

Source. 1993, 159:3, eff. May 24, 1993.

Section 147-A:17

147-A:17 Civil Forfeiture. –

I. Any person shall be subject to a civil forfeiture of up to \$50,000 for each day of a continuing violation, in addition to enforcement by injunctive relief, who violates:

(a) Any provision of RSA 147-A or any rule adopted by the commissioner relative to RSA 147-A; or

(b) Any term or condition of a permit or an order issued under RSA 147-A.

II. Civil forfeitures levied under RSA 147-A:17, I, shall be paid to the New Hampshire hazardous waste cleanup fund established under RSA 147-B.

III. In addition to any civil forfeiture imposed under RSA 147-A:17, I, any person who violates or causes or suffers a violation of RSA 147-A:17, I, shall be strictly liable without regard to fault for costs directly or indirectly resulting from the violation relating to:

(a) Containment of hazardous wastes;

(b) Necessary cleanup and restoration of the site and the surrounding environment; and

(c) Removal of the hazardous wastes.

Source. 1981, 413:2. 1983, 227:3. 1986, 202:6, I(e). 1996, 228:110, eff. July 1, 1996.

Section 147-A:17-a

147-A:17-a Administrative Fines. –

I. The commissioner of the department of environmental services, after notice and hearing pursuant to RSA 541-A, may impose an administrative fine not to exceed \$2,000 for each offense upon any person who violates any provision of this chapter including any rule adopted under the provisions of this chapter. Rehearings and appeals from a decision of the commissioner under this paragraph shall be in accordance with RSA 541. Any administrative fine imposed under this section shall not preclude the imposition of further penalties under this chapter. The commissioner shall adopt rules, under RSA 541-A, relative to:

(a) A schedule of administrative fines which may be imposed under this paragraph for violations of this chapter as provided above.

(b) Procedures for notice and hearing prior to the imposition of an administrative fine.

II. The proceeds of administrative fines levied pursuant to paragraph I shall be deposited by the commissioner into the hazardous waste cleanup fund established by RSA 147-B.

Source. 1989, 22:1. 1995, 217:4, eff. Jan. 1, 1996.

Section 147-A:18

147-A:18 Interstate Cooperation. – The general court encourages cooperative activities by the department with other states for the improved management of hazardous wastes; for improved, and so far as is practicable, uniform state laws relating to the management of hazardous wastes; and for compacts between this and other states for the improved management of hazardous wastes.

Source. 1981, 413:2. 1983, 227:3. 1986, 202:6, I(e). 1996, 228:107, eff. July 1, 1996.

Section 147-A:19

147-A:19 Limits. – Nothing contained in this chapter shall be construed to modify or limit the duties and authority conferred upon the department under RSA 146-A, RSA 485, RSA 485-A, or RSA 125-C.

Source. 1981, 413:2. 1989, 339:18. 1996, 228:33, eff. July 1, 1996.

Section 147-A:20

147-A:20 Severability. – If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this chapter are severable.

Source. 1981, 413:2, eff. June 23, 1981.

TITLE X

PUBLIC HEALTH

CHAPTER 147-B

HAZARDOUS WASTE CLEANUP FUND

Section 147-B:1

147-B:1 Findings and Purpose. –

- I. The general court hereby finds that as a result of past hazardous waste dumping activities, the potential for spills of hazardous materials and the present lack of proper hazardous waste treatment, storage or disposal facilities within the state, the problem of managing movement of hazardous materials and hazardous waste in the state has become a matter of great concern.
- II. The general court hereby declares that the purpose of RSA 147-B is to provide for the proper, adequate and safe cleanup of sites within New Hampshire where hazardous wastes or materials have been improperly discharged, disposed of or spilled. It is further the purpose of this chapter to support the regulatory and enforcement efforts associated with such cleanups, the transportation of hazardous wastes, and the proper permitting of hazardous waste facilities.
- III. Nothing contained in this chapter is intended to duplicate the functions set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law 96-510.

Source. 1981, 413:3. 1990, 253:3. 1991, 226:4, eff. July 1, 1991.

Section 147-B:2

147-B:2 Definitions. –

In this chapter, the following words shall have the following meanings, unless the context otherwise requires:

I. [Repealed.]

I-a. "Borrower" means the obligor of an obligation secured by a mortgage interest, mortgage lien, or security interest in a facility.

I-b. "Automotive oil" means any lubricating oil, which is reclaimable, classified for use in an internal combustion engine, transmission, gear box or differential for a motor vehicle, boat, off highway recreational vehicle, or commercial or household power equipment.

I-c. "Commissioner" means the commissioner of the department of environmental services.

I-d. "Department" means the department of environmental services.

II. "Disposal" means the discharge, deposit, incineration, injection, dumping, spilling, leaking or placing of any waste into or onto any land or water so that the waste or any constituent of the waste may enter the environment, be emitted into the air, or be discharged into any waters, including groundwaters.

III. "Facility" means any site, area or location where hazardous waste or hazardous materials are or have been treated, stored, generated, disposed of, or otherwise come to be located.

III-a. (a) "Fiduciary" means a person:

(1) Who is acting in any of the following representative capacities, but only to the extent such person is acting in such representative capacity: an executor or administrator of an estate, including a voluntary executor or a voluntary administrator; a guardian; a conservator; a trustee under a will under which the trustee takes title to, or otherwise controls or manages, property for the purpose of protecting or conserving such property under the ordinary rules applied in the courts of the state of New Hampshire; a court-appointed receiver; a trustee appointed in proceedings under federal bankruptcy laws; an assignee or a trustee acting under an assignment made for the benefit of creditors; a trustee under a revocable or irrevocable donative or estate-planning inter vivos trust; or a trustee, pursuant to an indenture agreement or similar financing agreement, for debt securities, certificates of interest of participation in any such debt securities, or any successor thereto; and

(2) Who holds legal title to, controls, or manages, directly or indirectly, any facility as a fiduciary for purposes of administering an estate or trust of which such facility is a part.

(b) Any person or entity acting as trustee of a business trust, a realty trust, a real estate trust, a nominee trust, or any similar trust shall not be considered a "fiduciary" under this chapter.

III-b. "Foreclosure" means any foreclosure by a holder of a mortgage lien, or, in the case of a tax lien, the conveyance of property by tax deed by a municipality, county or state pursuant to the procedures of RSA 80:20-RSA 80:42-a or of RSA 80:58-RSA 80:86.

IV. "Fund" means the New Hampshire hazardous waste cleanup fund.

V. "Generation" means the act of producing hazardous waste.

VI. "Generator" means any person who owns or operates a facility where hazardous waste is generated.

VII. "Hazardous waste" means a solid, semi-solid, liquid or contained gaseous waste, or any combination of these wastes:

(a) Which, because of either quantity, concentration, or physical, chemical, or infectious characteristics may:

(1) Cause or contribute to an increase in mortality or an increase in irreversible or incapacitating reversible illness; or

(2) Pose a present or potential threat to human health or the environment when improperly treated, stored, transported, disposed of or otherwise mismanaged.

(b) Or which has been identified as a hazardous waste by the department using the criteria established under RSA 147-A:3, I or as listed under RSA 147-A:3, II. Such wastes include, but are not limited to, those which are reactive, toxic, corrosive, ignitable, irritants, strong sensitizers or which generate pressure through decomposition, heat or other means. Such wastes do not include radioactive substances that are regulated by the Atomic Energy Act of 1954, as amended.

VIII. "Hazardous materials" means those substances or materials in such quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce, by all modes which may include, but are not limited to, explosives, radioactive materials, etiologic agents, flammable liquids or solids, combustible liquids or solids, poisons, oxidizing or corrosive materials, and compressed gases which are listed by the Materials Transportation Bureau of the United States Department of Transportation in Title 49 of the Code of Federal Regulations, as amended.

VIII-a. [Repealed.]

VIII-b. "Notice of lien" means an instrument signed on behalf of the commissioner, designating a particular facility or facilities and identifying the persons then deemed by the commissioner to be liable under this chapter with respect to each such facility and their mailing addresses, to the extent known to the commissioner, and declaring a lien upon the real and personal property of such persons for the payment of the amounts due or to become due from such persons to the state under this chapter; provided, however, that neither the failure to state any address nor the designation of an incorrect address shall invalidate such notice of lien; and provided further that successive notices of lien, naming the persons so deemed liable, may be issued. The notice of lien shall be in the following form:

NOTICE OF LIEN

NOTICE is hereby given that the Department of Environmental Services claims a lien against the persons identified below pursuant to RSA 147-B:10-b in the amount claimed:

Name/Address	Location of Facility	Amount
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In accordance with RSA 147-B:10-b, this notice shall be recorded with _____ and shall constitute a lien against property of the person(s) identified above and shall have effect and priority in accordance with RSA 147-B:10-b upon recording of this notice of lien with the above referenced department.

Dated this _____ day of _____, 20 ____.

DEPARTMENT OF ENVIRONMENTAL SERVICES

By: _____

VIII-c, VIII-d. [Repealed.]

VIII-e. "Holder" means a person who holds indicia of ownership primarily to protect a mortgage interest or security interest in real or personal property on or at the facility.

VIII-f. "Indicia of ownership" means evidence of a mortgage lien, a security interest, or other interests in real or personal property securing payment or performance of a loan or other obligation.

VIII-ff. "Mortgage interest" and "mortgage lien" mean a mortgage lien, tax lien, or other lien or encumbrance securing the payment of money or performance of an obligation.

VIII-g. "Participation in the management of a facility" means the actual participation by a holder in the management or operational affairs of the facility, including without limitation where a holder (i) exercises decision-making control over environmental compliance or (ii) exercises control at a level comparable to that of a manager of the enterprise with responsibility for day-to-day decision-making either with respect to environmental compliance or all or substantially all of the operational (as opposed to financial or administrative) aspects of the facility. The following types of activities, among others, shall not constitute participation in the management of a facility:

(a) Taking title to a facility by foreclosure, by accepting a deed to such facility in lieu of foreclosure or by other similar means, or the transfer or sale of such facility;

(b) Conducting, or requiring the borrower to conduct, an environmental assessment or audit of the facility;

(c) Withholding funds under an existing obligation or restructuring or renegotiating the terms of a borrower's obligations, including but not limited to, requiring the payment of interest, the extension of payment periods or the issuance of additional funds;

(d) Providing to the borrower financial advice;

(e) Requiring or advising the borrower to comply with federal, state or local laws, rules, regulations, orders or permits;

(f) Collecting rents, maintaining utility services and securing the facility from unauthorized entry; and

(g) Undertaking any cleanup action approved by the department.

VIII-h. "Primarily to protect a mortgage interest or security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing the payment or performance of the loan or other obligation. The indicia of ownership held after foreclosure continues to be maintained primarily as protection for a security interest provided that the holder undertakes to sell, re-lease property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the property in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the facility, taking all facts and circumstances into consideration, and provided that the holder does not participate in management. A holder establishes that it is seeking to sell, re-lease or otherwise divest itself of the property following foreclosure and its equivalents by, within 5 months following foreclosure, listing the facility with a broker, dealer, or agent who deals with the type of property in question, or by advertising the facility as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the facility in question, or a newspaper of general circulation covering the area where the property is located. The holder is entitled to a presumption that it is holding indicia of ownership primarily to protect a mortgage interest or security interest but if the holder does not divest itself of the property within 3 years, the holder bears the burden of showing compliance with this paragraph.

VIII-i. "Qualifying holder" means a holder who does not participate in the management of the facility.

IX. "Person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, United States government or any agency thereof, political subdivision of the state, or any interstate body.

IX-a. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

X. "Storage" means the containment of hazardous wastes, either on a permanent basis or on a temporary basis or for a period of years, in such a manner as not to constitute disposal of the hazardous wastes.

X-a. "Tax lien" means a tax lien arising under RSA 80:19, the rights acquired by the grantee in a tax sale pursuant to RSA 80:20-RSA 80:42-a, and a tax lien acquired or transferred pursuant to RSA 80:58-RSA 80:86.

XI. "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and, finally, to the point of ultimate storage or disposal.

XI-a. "Transporter" means any person who transports hazardous waste.

XI-b. [Repealed.]

XII. "Treatment" means any process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize the waste or to render the waste not hazardous, safer for transport, amenable to recovery, amenable to storage or reduced in volume.

XIII. "Used oil" means any oil that has been refined from crude oil, or synthetic oil, which, through use or handling, has become unsuitable for its original purpose due to the presence of physical or chemical impurities or loss of original properties.

Source. 1981, 413:3. 1983, 227:4, 6, 20, I; 291:1, I. 1986, 119:2-5; 202:6, I(e), 29, VI. 1992, 178:1, 2; 263:1. 1993, 323:11-13. 1994, 199:16-19; 364:2, 3, 14, I, II. 1995, 216:3. 1996, 228:34, 35, 106, 107. 1999, 52:7, eff. July 20, 1999.

Section 147-B:3

147-B:3 New Hampshire Hazardous Waste Cleanup Fund Established. –

I. There is hereby established the New Hampshire hazardous waste cleanup fund to be used for the purposes of this chapter.

II. This nonlapsing, revolving special fund is hereby continually appropriated to be expended by the department in accordance with RSA 147-B. All moneys not currently needed to meet the obligations of the department shall be deposited with the state treasurer who shall keep this money in a separate fund, designated the New Hampshire hazardous waste cleanup fund, notwithstanding RSA 6:12. The state treasurer shall invest the moneys deposited with him as provided by law. Interest received on investments made by the state treasurer shall also be credited to the fund.

III. [Repealed.]

Source. 1981, 413:3. 1983, 227:6. 1986, 158:21; 202:6, I(e). 1996, 228:107, eff. July 1, 1996.

Section 147-B:4

147-B:4 Siting Program. –

I. The department shall allocate \$ 60,000 annually from the fund for the development and implementation of a hazardous waste facility siting program. This program may include the establishment by the state of hazardous waste facility sites in the state to facilitate proper hazardous waste management.

II. Funds allocated to the siting program shall be accounted for separately and managed in accordance with rules adopted by the commissioner. The commissioner may expend moneys from the siting program fund with the approval of governor and council for the purposes of this section.

III. The department, with the assistance of the office of strategic initiatives, shall administer the hazardous waste facility siting program established under paragraph I. The department and office of strategic initiatives shall survey the state to identify potential sites within the state which conform to siting criteria adopted under RSA 147-A:3. Following identification of potential sites, the department shall notify the governing body of the town in which the potential site is located.

IV. [Repealed.]

Source. 1981, 413:3. 1983, 227:5. 1986, 120:1; 202:6, I(e). 1996, 228:107, 110. 2003, 319:9. 2004, 257:44, eff. July 1, 2004. 2007, 219:11, I, eff. July 1, 2007. 2017, 156:64, eff. July 1, 2017.

Section 147-B:5

147-B:5 Certification by Governor. – The governor, upon the recommendation of the commissioner, may certify that circumstances exist which require use of the fund when the treatment, storage, transportation, or disposal of hazardous waste or hazardous materials may cause immediate or long-term danger to the environment or public health and welfare.

Source. 1981, 413:3. 1983, 227:5. 1986, 202:6, I(e). 1996, 228:105, eff. July 1, 1996.

Section 147-B:6

147-B:6 Purpose and Use of Fund. –

I. The fund shall be used to provide for the adequate and safe containment and cleanup of sites within New Hampshire where hazardous wastes or hazardous materials have been stored or disposed of which threaten the environment or the public health and welfare.

I-a. The fund may be used for conducting department-approved household hazardous waste cleanup projects throughout the state. Expenditures from the fund for such projects shall be matched on a dollar-for-dollar basis by municipalities or by other local or regional entities in accordance with rules adopted by the department under RSA 147-B:7, III. It shall be a purpose of such assistance to enable local and regional entities to educate the public in the importance of the proper management of household wastes which have hazardous or toxic qualities. Programs which receive funding shall include in their proposal a significant public education component. To encourage such programs, the department shall prepare a suggested warrant article which local governmental entities may use to secure the local funding component.

I-b. Fees collected in accordance with RSA 147-A:4 and deposited into the hazardous waste cleanup fund shall be accounted for separately and used in processing hazardous waste facilities' permits and enforcing and implementing conditions of a permit.

I-c. [Repealed.]

I-d. Fees collected in accordance with RSA 147-B:12 and deposited in the hazardous waste cleanup fund shall be accounted for separately and used in the used oil collection program as provided in RSA 147-B:13.

I-e. Fees collected in accordance with RSA 147-F:14 and deposited into the hazardous waste cleanup fund shall be accounted separately and used in funding the operations and staff positions in RSA 147-F, the brownfields program.

I-f. Fees collected in accordance with RSA 147-A:5, III(b) and deposited in the hazardous waste cleanup fund shall be accounted for separately and used to process hazardous waste coordinator certification applications, provide technical training and assistance to coordinators, and hire personnel.

I-g. Fees collected pursuant to RSA 147-A:5, IV (c) and RSA 147-A:6-a shall be deposited in the hazardous waste cleanup fund established in RSA 147-B:3 and shall be accounted for separately and used to manage the small quantity hazardous waste generator self-certification program, provide technical training and assistance to hazardous waste generators, hire personnel, and pay administrative costs.

II. After the governor certifies that circumstances require the use of the fund, the department may enter into contracts, agreements, or consultative services and use the fund for the following purposes:

(a) Hiring of consultants and personnel;

(b) Purchase, lease or rental of necessary equipment; and

(c) Other necessary expenses directly associated with the containment and cleanup of hazardous wastes or hazardous materials.

III. The department shall submit all contracts to the governor and council for advance approval, except in emergency situations.

IV. The department may use up to \$600,000 per year from the fund to pay for permitting, administrative and enforcement costs associated with the fund.

V. Notwithstanding any other provision of law, the interest and principal due on bonds and notes shall not be paid out of funds from the hazardous waste cleanup fund.

VI. The department may use the fund to support the pollution prevention program established under RSA 21-O:15 through RSA 21-O:22.

Source. 1981, 413:3. 1983, 137:11; 227:6. 1985, 346:1, 2, 5. 1986, 202:6, I(e). 1989, 222:1. 1990, 253:4, 5. 1991, 226:5, 6. 1992, 263:2, 3. 1994, 364:4. 1995, 308:127, VIII. 1996, 228:107; 241:7. 2002, 74:2; 87:4. 2003, 148:5, eff. July 1, 2003.

Section 147-B:7

147-B:7 Rulemaking. –

I. The commissioner shall adopt rules, after public hearing and pursuant to RSA 541-A, relative to:

- (a) Time, amount and manner of payment of hazardous waste cleanup fund fees;
- (b) Required records to be kept by generators and by facility owners or operators of the type and quantity of hazardous waste generated and received;
- (c) Certified reports required to be submitted with fee payments by generators and by facility owners and operators;
- (d) Exemption from the generator fee for generators participating in hazardous waste recycling programs; and
- (e) The exemptions, limitations of liability, and lien priority provisions for holders and fiduciaries, including qualifying holders.

II. The commissioner shall adopt rules, after public hearing and pursuant to RSA 541-A, relative to:

- (a) Administration of funds allocated to the siting program under RSA 147-B:4, I; and
- (b) Purposes for which funds in the siting program may be used, including, but not limited to:
 - (1) Obtaining independent investigations of proposed sites;
 - (2) Providing financial assistance to local officials, planning groups, or citizen groups for the study and development of sites;
 - (3) Obtaining the assistance of an impartial mediator for the voluntary settlement of disputes over the development of sites.

III. The commissioner shall adopt rules, after public hearing and pursuant to RSA 541-A, relative to:

- (a) Administration of funds used for the household hazardous waste cleanup projects under RSA 147-B:6, I-a.
- (b) Purposes for which funds for such projects may be used.
- (c) Types of household hazardous waste projects that may be conducted using fund moneys.
- (d) Criteria under which such projects shall be conducted, including, but not limited to, the financial, contractual, safety, and educational requirements for such projects.

IV. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to procedures and criteria for funding used oil collection centers as provided in RSA 147-B:13, and relative to the annual reports submitted by used oil transporters as provided in RSA 147-B:14.

V. [Repealed.]

Source. 1981, 413:3. 1983, 137:12, 13; 227:6. 1985, 346:3. 1986, 202:6, I(e). 1993, 323:14. 1994, 364:5. 1996, 8:7; 228:110. 2002, 74:4, I, eff. June 30, 2002.

Section 147-B:8

147-B:8 Hazardous Waste Cleanup Fund Fees. –

I. Each hazardous waste generator that generates in a 3-month period 660 pounds or more of unrecycled hazardous waste shall pay a quarterly fee of \$0.06 per pound or a minimum of \$100, to the department.

I-a. [Repealed.]

II. In computing the amount of hazardous waste generated in a 3-month period, a generator may deduct from the amount of hazardous waste generated the amount of hazardous waste recycled, in a manner approved by the department.

III. A quarterly fee shall be assessed on each hazardous waste facility located in New Hampshire that receives hazardous waste from out-of-state for the purpose of treating, storing, or disposing of such waste. Said fee shall be based solely on hazardous waste received by the facility from out-of-state sources. The fee on such waste shall be no more than \$.007 per kilogram (\$.003 per pound). The facility's owner or operator shall make the appropriate quarterly fee payments to the department.

IV. The department shall deposit fees collected under this section into the cleanup fund.

V. Failure to pay fees within 60 days of the date due shall result in the assessment of interest at a rate established by the commissioner. The commissioner may waive all or any portion of interest for good cause. The department shall deposit interest collected under this section into the cleanup fund.

Source. 1981, 413:3. 1983, 137:14; 227:6. 1986, 202:6, I(e). 1990, 3:78. 1992, 178:3. 1994, 364:14, III. 1996, 228:107. 1999, 232:1, eff. Jan. 1, 2000. 2007, 219:4, 5, eff. July 1, 2007.

Section 147-B:9

147-B:9 Exemptions. –

The following shall not be subject to the fees established in RSA 147-B:8:

- I. Sludge from publicly owned treatment works located in the state, as defined in rules adopted by the commissioner;
- II. Bottom boiler ash and flyash from incinerators which process solely municipal waste, as defined in rules adopted by the commissioner;
- III. Hazardous wastes which are recycled and exempt from the fee under RSA 147-B:8, II; and
- IV. Wastes resulting from the remediation of environmentally contaminated properties by persons who meet one of the following eligibility criteria:
 - (a) The person is not liable under RSA 147-B for any release or threatened release of a contaminant or contaminants at the property and is either:
 - (1) A prospective purchaser of environmentally contaminated property, or
 - (2) A person who holds a mortgage interest or other security interest in environmentally contaminated property, including a municipality with respect to property on which there are overdue real estate taxes due to the municipality.
 - (b) The person is a current owner of environmentally contaminated property, whose liability under RSA 147-B is based solely on the person's status as owner, who did not generate the hazardous waste which constitutes the contamination on the property, and who has not operated, managed, or controlled, either directly or indirectly, the hazardous waste facility on the property.
- V. Soil that is a hazardous waste due to lead contamination resulting from the use of the area as a shooting range, provided that clean-up is initiated and completed by the owner in accordance with all applicable laws and department requirements.
- VI. Household hazardous waste.

Source. 1981, 413:3. 1983, 227:6. 1986, 202:6, I(e). 1992, 178:4. 1994, 364:6. 1996, 228:110. 1997, 269:2. 2000, 170:1. 2003, 148:6, eff. July 1, 2003.

Section 147-B:10

147-B:10 Strict Liability; Civil Action. –

- I. Subject only to the defenses set forth in RSA 147-B:10-a and the exclusions and limitations set forth in RSA 147-B:10, IV and V, any person who:
 - (a) Owns or operates a facility;
 - (b) Owned or operated a facility at the time hazardous waste or hazardous materials were disposed there;
 - (c) By contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, to any facility of hazardous waste or hazardous materials owned, possessed or controlled by such person; or
 - (d) Accepts or accepted any hazardous waste or hazardous material for transport to disposal or treatment facilities or sites selected by such person,shall be strictly liable for all costs incurred by the state in responding to a release or threatened release of hazardous waste or hazardous material at or from the facility as specified in paragraph II.
- I-a. Government entities, including their employees, shall not be liable for the release of hazardous waste during the lawful transportation of locally collected household hazardous waste over the byways of the state, to regional hazardous waste collection centers or in-state or out-of-state disposal facilities in the absence of willful, wanton or reckless conduct.
- II. Costs recoverable by the state under paragraph I shall include all costs relating to:
 - (a) Containment of the hazardous wastes or hazardous materials.
 - (b) Necessary cleanup and restoration of the site and the surrounding environment.
 - (c) Removal of the hazardous wastes or hazardous materials.
 - (d) Such actions as may be necessary to monitor, assess and evaluate the release or threat of release of a hazardous waste or hazardous material; or to mitigate damage to the public health or welfare that may otherwise

result from a release or threat of release.

III. (a) The attorney general may institute an action before the superior court for the county in which the facility is located against any person liable pursuant to paragraph I of this section to recover all costs incurred by the state. Costs recovered under this section shall be deposited into the fund except that costs recovered to offset expenditures made from the drinking water and groundwater trust fund established in RSA 6-D:1 shall be deposited into the drinking water and groundwater trust fund.

(b) Notwithstanding the rights of the state under subparagraph (a) above, any person who has expended funds to remedy environmental damage may also bring an action in the superior court for the county in which the facility is located against any person who may be liable for such damage pursuant to paragraph I of this section. Such person's right to contribution shall be limited to expenditures which are incurred for the purposes described in paragraph II of this section and which are consistent with the laws and rules of the state of New Hampshire. A person's right to recovery under this section shall not be barred by the fact that the party bringing the action is itself liable to the state under this section.

IV. Notwithstanding paragraph I, the liability of a holder, when acting as a holder, shall be determined as follows:

(a) A qualifying holder shall not be liable to the state or any other person under paragraph I.

(b) A holder who is not a qualifying holder shall be liable under paragraph I; however, the liability of a holder who demonstrates that its acts or omissions have not caused the release of hazardous waste or materials at a facility shall be limited to the lesser of:

(1) The value of the secured property as determined by a method acceptable to both the state and the holder, until otherwise specified by rules of the department of environmental services; or

(2) The amount of the outstanding indebtedness secured by the facility.

(c) Nothing in this section shall preclude or limit claims under paragraph I against non-employee agents or independent contractors retained by a holder.

(d) Nothing in this section shall preclude or limit claims to recover costs under this section against a qualifying holder whose negligent acts or omissions or intentional misconduct has caused the release of hazardous waste or materials at a facility. A qualifying holder shall not be attributed with the negligence or intentional misconduct of non-employee agents or independent contractors so long as the qualifying holder has conducted itself without fault with regard to its relationship with such non-employee agents or independent contractors.

V. Notwithstanding paragraph I, the liability of a fiduciary, when acting as a fiduciary, shall be determined in accordance with the following:

(a) A fiduciary shall not be liable in its individual capacity to the state or any other person under paragraph I.

(b) Nothing in this section shall preclude claims under paragraph I against:

(1) A fiduciary in its representative capacity;

(2) The assets of the estate or trust administered by the fiduciary; or

(3) Non-employee agents or independent contractors retained by a fiduciary.

(c) Notwithstanding this section, nothing shall preclude claims to recover costs under this section against a fiduciary in its individual capacity whose negligent acts or omissions or intentional misconduct has caused the release of hazardous waste or materials at a facility. A fiduciary shall not be attributed with the negligence or intentional misconduct of non-employee agents or independent contractors so long as the fiduciary has conducted itself without fault with regard to its relationship with such non-employee agents or independent contractors.

VI. Nothing in this section shall be construed to relieve a holder or fiduciary from any legal duty requiring a report, notification or disclosure of a release of hazardous waste or materials otherwise established under New Hampshire law.

VII. There shall be no implied cause of action for third party damages against any person under this section to the extent that the person's liability under this section is based solely on the person's ownership of a facility.

Source. 1981, 413:3. 1983, 227:6. 1986, 119:6; 202:6, I(e). 1988, 12:1. 1990, 253:6. 1993, 323:15, 16. 1996, 266:9, eff. June 10, 1996. 2006, 282:2, eff. Sept. 13, 2006. 2019, 346:293, eff. July 1, 2019.

Section 147-B:10-a

147-B:10-a Defenses; Liability of Landowners Limited. –

I. There shall be no liability under RSA 147-B:10, I for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of hazardous wastes or hazardous materials, and the resulting damages were caused solely by:

- (a) An act of God;
- (b) An act of war; or
- (c) An act or omission of a third party other than an employee, agent, or independent contractor of the defendant, if the defendant establishes by a preponderance of the evidence that he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and that he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions.

II. Notwithstanding any other provision of law, an owner or former owner of property shall not be held strictly liable for the treatment or cleanup of hazardous waste or hazardous materials discovered on his property if:

- (a) He did not, in any way, cause or materially contribute to the hazardous substance problem.
- (b) He reported the existence of the hazardous substance to the appropriate authorities within a reasonable time of discovery.
- (c) He can prove that he had no knowledge or reason to know of the hazardous substance problem prior to his purchase of the property. To establish that the defendant had no reason to know, as provided in this subparagraph, the defendant must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability.

III. Notwithstanding any other provision of law, an owner or former owner of property shall not be held strictly liable for the treatment or cleanup of hazardous waste, hazardous material, oil as defined in RSA 146-A:2, III, or hazardous substance as defined in RSA 146-C:1, VII-a that are discovered on the property if:

- (a) The owner did not, in any way, cause or materially contribute to the contamination of the property; and
- (b) The contamination migrated onto the property from a source that, at the time of discovery of the contamination, was located on another property.

Source. 1986, 119:6. 1989, 355:1. 1996, 266:10, eff. Aug. 9, 1996.

Section 147-B:10-b

147-B:10-b Lien. –

I. The department shall have a lien upon the business revenues and all real and personal property of any person subject to liability under RSA 147-B:10, I for all costs recoverable by the state pursuant to RSA 147-B:10, II.

II. In order for the lien created under this section to be valid and effective against the real property of a person liable under RSA 147-B:10, I, the department shall record the notice of lien in the registry of deeds for each county in which such person owns or holds an interest in real property. Upon its recording in a registry of deeds, the notice of lien shall be effective against all real property of the person located within such county. In order for the lien created by this section to be perfected and valid against the business revenues and personal property, tangible and intangible, of the person subject to liability under RSA 147-B:10, I, the department shall record the notice of lien with the office of the secretary of state in which financing statements are filed pursuant to RSA 382-A:9-501(a)(2). The department shall file separate notices of lien forms for each person subject to liability under RSA 147-B:10, I. There shall be no charge for filing a notice of lien. The fee for discharging a notice of lien shall be borne by the person identified in the notice of lien.

III. The priority of the lien created by this section shall be as follows:

- (a) As to the real property on which the hazardous waste or hazardous material is located, the lien shall constitute a first priority lien against such real property prior to all encumbrances, whether of record or inchoate, when the notice of lien is recorded in the registry of deeds for the county in which such real property is located and the notice of lien identifies the record owner of such real property. This subparagraph shall not apply to real property in use as, or being constructed primarily for, residential purposes. Such residential real property shall be governed by subparagraph (c) of this paragraph.
- (b) As to the business revenues generated from the facility on which hazardous waste or hazardous material is located and personal property located at the facility on which hazardous waste or hazardous material is located,

the lien shall constitute a first priority lien against such business revenues or personal property, prior to all encumbrances, whether of record or inchoate, when the notice of lien is filed with the secretary of state and the notice of lien identifies the owner of such personal property.

(c) As to all other property, whether real, personal or business revenues, other than that which is described in subparagraph (a) or (b) of this paragraph, the notice of lien shall constitute a lien that is effective as of the date and time of recording or filing, without priority on antecedent encumbrances of record when the notice of lien is properly recorded in the appropriate registry of deeds or filed with the secretary of state.

(d) Notwithstanding the lien priorities created under subparagraphs (a)-(c), a holder who, either voluntarily or in conjunction with others (including the state and federal government), undertakes clean-up activities or expends funds on other response or remedial costs, shall have a lien of equal rank and priority with the lien created by paragraph I to the extent of moneys expended for remediation.

IV. The department shall also send a copy of the notice of lien to the person identified in the notice of lien at the address set forth in the notice of lien by certified mail, return receipt requested, postage prepaid.

Source. 1986, 119:6; 202:6, I(e). 1989, 60:1. 1993, 323:17, 18. 1996, 228:107. 2001, 102:27, eff. July 1, 2001.

Section 147-B:11

147-B:11 Penalty; Fine. –

I. Any generator shall be guilty of a misdemeanor who:

(a) Does not pay the fee required in RSA 147-B:8; or

(b) Knowingly gives or causes to be given any false information in reports, records, or documents required by the department under RSA 147-B.

II. Each day of violation of RSA 147-B:11, I, shall constitute a separate offense. Notwithstanding RSA 651:2, each violation of RSA 147-B:11, I, shall be punishable by a fine not to exceed \$100 a day.

III. Fines paid for violations of RSA 147-B:11, I, shall be deposited into the fund, notwithstanding RSA 618:2.

Source. 1981, 413:3. 1983, 227:6. 1986, 202:6, I(e). 1996, 228:107, eff. July 1, 1996.

Section 147-B:11-a

147-B:11-a Annual Report. – The department shall submit an annual report by October 1 of each year to the governor and council, speaker of the house of representatives, and president of the senate, relative to the activities and finances of the hazardous waste cleanup fund.

Source. 2007, 219:12, eff. July 1, 2007.

Used Oil Collection

Section 147-B:12

147-B:12 Automotive Oil Fee. –

I. A fee of \$.02 per gallon of automotive oil shall be assessed at the time of import to this state. Persons licensed under RSA 146-A:11-b, II shall be liable for payment of this additional fee which shall be collected and enforced by the department of safety in the manner described in RSA 146-A:11-b. The department of environmental services may waive all or any portion of penalties or interest for good cause. All fee revenues shall be deposited in the hazardous waste cleanup fund in accordance with RSA 147-B:6, I-d.

II. The department of environmental services may apply for, request, solicit, contract for, receive, and accept gifts, grants, donations, and other assistance from any source to carry out the purposes of this subdivision.

Source. 1994, 364:7; 364:11. 1996, 228:107. 1997, 269:4, eff. July 1, 1998 at 12:01 a.m.

Section 147-B:13

147-B:13 Use of Money Collected. –

I. The department shall use the money collected under RSA 147-B:12 to:

(a) Award grants to pay for the costs associated with the establishment, improvement, or operation of used oil collection centers at public facilities such as fire stations, police barracks, highway departments, county garages, solid waste facilities, or other suitable locations; and provide technical assistance to persons who organize such programs. Political subdivisions and other government entities shall be eligible for grants not to exceed \$2,500 on an annual basis for the costs associated with the establishment or improvement of used oil collection facilities. In addition, political subdivisions and other government entities shall be eligible for grants on an annual basis for costs associated with the off-site transportation and recycling of used oil collected from individuals disposing of used oil. Non-profit organizations that focus on waste management and recycling issues, and private businesses that are registered state motor vehicle inspection stations, shall be eligible for grants not to exceed \$2,500 on an annual basis for the costs to establish a used oil collection facility. In providing funding under this subparagraph, priority shall be given to reimburse political subdivisions without public collection centers, followed by political subdivisions that have established collection centers, followed by other government entities, state motor vehicle inspection stations, and non-profit organizations. Political subdivisions that use the same center may combine their awards, but in no case shall the amount awarded to a collection center exceed \$5,000.

(b) Develop an educational program on the proper use, handling and disposal of used oil by the public and private businesses.

(c) Provide personnel, equipment and services to administer and enforce the provisions of this subdivision and state and federal laws relative to the proper use, handling and disposal of used oil.

II. The commissioner of environmental services may, within the limits of moneys appropriated, pay no more than \$10,000 to dispose of all or a portion of a load of contaminated used oil possessed by a political subdivision of the state.

Source. 1994, 364:7. 1996, 228:106, 107. 1997, 269:3. 2000, 146:1, eff. July 22, 2000.

Section 147-B:14

147-B:14 Transporters Report. – Transporters of used oil registered under RSA 147-A shall submit annual reports to the department detailing the amount and type of used oil which they handle and such other information as the department may require. The department shall prepare the report forms and establish the submittal date.

Source. 1994, 364:7. 1996, 228:106, 107. 1999, 52:6, eff. July 20, 1999.

Section 147-B:15

147-B:15 Repealed by 2007, 219:11, II, eff. July 1, 2007. –